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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:)	Case No. 08-35653 (KRH)
)	Jointly Administered
CIRCUIT CITY STORES, INC., et al.,)	Chapter 11
)	
Debtors.)	

**MOTION OF NATIONAL RETAIL PROPERTIES, INC., FOR
ALLOWANCE OF ADMINISTRATIVE CLAIMS FOR POST PETITION RENT**

National Retail Properties, Inc. (“National”), by and through its undersigned counsel and pursuant to 11 U.S.C. §§ 503(b) and 365(d)(3), hereby files its motion for allowance of administrative claims for certain unpaid amounts and in support thereof states as follows:

JURISDICTION

1. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

BACKGROUND

2. On November 10, 2008 (“Petition Date”), the above captioned debtors (“Debtors”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States

Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Virginia.

3. Debtors continue to operate their businesses and manage their affairs as debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

4. National is the landlord of commercial real estate located at: (1) 1731 E. Bayshore Road, E. Palo Alto, California 63376; (2) 26542 Town Center Drive, Foothill Ranch, California 28054; (3) 2651 East Franklin Boulevard, Gastonia, North Carolina 94303; and (4) 5610 Suemandy Road, St. Peters, Missouri 92610 (together “Premises”).

5. One or more Debtors executed lease agreements with National for the Premises all of which are unexpired.¹

6. As of the date of this motion, Debtors have not paid certain amounts for 1731 E. Bayshore Road, E. Palo Alto, California 63376 and 26542 Town Center Drive, Foothill Ranch, California 28054 from the Petition Date to November 31, 2008. Debtors subsequently rejected these leases.

7. Debtors have not yet rejected or assumed the leases for 2651 East Franklin Boulevard, Gastonia, North Carolina 94303 and 5610 Suemandy Road, St. Peters, Missouri 92610 as these locations are named in Exhibit “A” of the court’s Order Granting the Debtors’ Request Under Bankruptcy Code Section 365(d)(4) Extending Time Within Which Debtors May Assume Or Reject Unexpired Leases Of Nonresidential Real Property (Docket # 882). As an unexpired lease of nonresidential property, the Debtors may later assume or reject these leases. As of the date of this motion, Debtors have not paid certain amounts for these two properties from the Petition Date to November 31, 2008.

¹ The Debtors possess copies of the subject lease agreements. Upon request, Landlord will provide copies of such leases and any other relevant documentation to the Debtor and other parties.

8. One or more Debtors currently remain in possession of and enjoys the use and occupancy of the locations not yet rejected or assumed.

9. The leases require that Debtors pay rent in monthly installments in the amounts set forth in each particular lease.

10. As of the date of this motion, Debtors owe National \$34,072.63 in post-petition rent and \$7,542.06 in post-petition taxes for a total of \$41,614.69 for 2651 East Franklin Boulevard, Gastonia, North Carolina 94303.

11. As of the date of this motion, Debtors owe National \$36,226.05 in post-petition rent and \$11,409.69 in post-petition taxes for a total of \$47,635.74 for 5610 Suemandy Road, St. Peters, Missouri 92610.

12. As of the date of this motion, Debtors owe National \$38,278.39 in post-petition rent, \$9,456.41 in post-petition taxes and \$1,317.49 in post-petition CAM charges for a total of \$49,052.29 for 1731 E. Bayshore Road, E. Palo Alto, California 63376.

13. As of the date of this motion, Debtors owe National \$24,990.00 in post-petition rent, \$8,022.32 in post-petition taxes, \$1,771.46 in post-petition CAM charges and \$330.56 in post-petition association dues for a total of \$35,114.33 for 26542 Town Center Drive, Foothill Ranch, California 28054.

ARGUMENT

14. Section 365(d)(3) of the Bankruptcy Code states, “the trustee shall timely perform all obligations of the debtor,...arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1).” 11 U.S.C. §365(d)(3). Since the Bankruptcy Code compels a landlord to continue post-petition performance, “the provision of §§ 365(b)(1) and 365(d)(3) unambiguously

grant priority status to this class of involuntary claimant.” In re Pudgie’s Dev. Of NY, Inc., 202 B.R. 832, 836 (Bankr. S.D.N.Y. 1996). Such protections are critical to protect landlords from ever-increasing losses during the post-petition, pre-rejection period.

15. Section 365(d)(3) requires the timely payment of post-petition rent as an administrative expense at the full contract rate. See In re Track Auto Corp., 277 B.R. 655, 665 (Bankr. E.D. Va. 2002) (until lease is rejected, debtor is required to pay rent to landlord from the date of petition until the date the lease is rejected), rev’d on other grounds, 367 F.3d 237 (4th Cir. 2004); see also In re Best Products Co. Inc., 206 B.R. 404, 406 (Bankr. E.D. Va. 1997) (Congress enacted 365(d)(3) to guarantee landlords would not be placed at a disadvantage for providing post-petition services to debtor).

16. Debtors have failed to pay the administrative rent, taxes and other charges owed to National from the Petition Date until November 31, 2008 and continue to ignore their obligation to do so under the Bankruptcy Code. Accordingly, the court should enter an order allowing all amounts stated above as administrative claims.

17. Furthermore, the leases provide that the Debtors are obligated to pay National for all reasonable and actual legal fees incurred in connection with enforcing the leases after the Debtors’ default on their obligations thereunder. Accordingly, National requests that the Debtors be directed to pay the attorney’s fees and costs incurred by National in connection with filing and prosecuting this motion.

WAIVER OF MEMORANDUM OF LAW

18. National request that the requirement that all motions be accompanied by a separate memorandum of law be waived pursuant to Local Bankruptcy Rule 9013-1(G) because

there are no novel issues of law presented in the motion and all applicable authority is set forth in the motion.

NO PRIOR REQUEST

19. No previous motion for the relief sought herein has been made to this court any other court on behalf of National.

WHEREFORE, Creditor, National Retail Properties, Inc., respectfully requests the court enter an order authorizing and classifying the unpaid post-petition rent, taxes and other charges as well as National's attorney's fees as allowed administrative claims and granting such further relief the court deems just and proper.

Dated: January __, 2009.

Respectfully submitted,

/s/ Jerry L. Hall

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2009, a true and complete copy of the foregoing was filed and served using the Court's ECF System and was sent by Federal Express or first class mail, postage prepaid to the parties set forth below:

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